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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1183

CARBON FUEL COMPANY, *Petitioner*

v.

UNITED MINE WORKERS OF AMERICA; DISTRICT 17, UNITED MINE WORKERS OF AMERICA; AND LOCAL UNIONS NOS. 6572, 7626 AND 2236, UNITED MINE WORKERS OF AMERICA, *Respondents*

MOTION OF THE WASHINGTON LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE THE WASHINGTON LEGAL FOUNDATION

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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MOTION OF THE WASHINGTON LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

Washington Legal Foundation, Inc. moves, pursuant to Supreme Court Rule 42, for leave to file the annexed brief *amicus curiae* in the above-captioned proceeding. Consent to the filing of the brief has been withheld by counsel for respondents.

The Washington Legal Foundation, Inc. (WLF) is a non-profit tax-exempt corporation organized and existing under the laws of the District of Columbia for the purpose of engaging in litigation and the administrative process in matters affecting the broad public

interest. WLF has more than 50,000 members, contributors and supporters throughout the United States whose interests the Foundation represents.

WLF participates in and has devoted a substantial portion of its resources to cases relating to government regulations and constitutional law. WLF seeks to advance the interests of businesses and consequently, the American public.

The Washington Legal Foundation can bring to this case a perspective not presently represented which may assist in obtaining full consideration of public interest issues. The present parties to this case are primarily concerned with the end results of this lawsuit. None of the litigating parties is primarily focusing upon the general liability of district and international labor unions for damages created by unauthorized work stoppages. WLF's sole concern in this case is to uphold the ability of businesses victimized by "wildcat" strikes to collect compensatory damages from unions, whether they are local, district or international, which fail to take reasonable steps to mitigate these evils.

The economy of the United States is currently going through a turbulent period. One aspect of this turbulence is represented by an increasing tendency for employees to engage in unauthorized or wildcat work action for a variety of reasons. These actions create often significant economic expenses for employers as well as disruption of the stream of interstate commerce. Most importantly, wildcat strikes undermine the vitality of collective bargaining agreements. They

constitute a menace to harmonious relations between workers and management. WLF seeks to protect the interests of the Carbon Fuel Company, as well as all other similarly afflicted concerns, from the dangers of unauthorized strikes through the application of a reasonable effort standard of liability for damages linked to the local, district and international levels of the union hierarchy.

Respectfully submitted,

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The economy of the United States is currently going through a turbulent period. One aspect of this turbulence is represented by an increasing tendency for employees to engage in unauthorized or wildcat work action for a variety of reasons. These actions create often significant economic expenses for employers as well as disruption of the stream of interstate commerce. Most importantly, wildcat strikes undermine the vitality of collective bargaining agreements. They constitute a menace to harmonious relations between workers and management. WLF seeks to protect the interests of the Carbon Fuel Company, as well as all other similarly afflicted concerns, from the dangers of unauthorized strikes through the application of a reasonable effort standard of liability for damages linked to the local, district and international levels of the union hierarchy.

ARGUMENT

I. District and International Labor Unions Should Be Held Liable For Damages Caused By Unauthorized Strikes In Violation of Collective Bargaining Agreements When They Fail To Use Reasonable Efforts To Prevent Or End Them.

Unauthorized or wildcat strikes have been defined as: "strikes, slowdowns or work stoppages in violation of the no-strike provisions of a collective bargaining agreement."[1] These activities are characterized by "workers in a strong display of protest walking off their jobs in the hope of correcting something they believe unjust. They ignore the established methods for dealing with complaints and thus precipitate an unauthorized work stoppage."[2]

The problems raised by such unauthorized activities have been significant enough to warrant remedial attention from both Congress and the federal courts.

A. Labor Unions are liable for damages from unauthorized strikes even if a no-strike clause is absent from the collective bargaining agreement.

In 1947, Congress enacted the Taft-Hartley Act[3] in order to better balance the collective bargaining positions of unions and employers. Section 301(a) of the

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[1] Shearer, *Legal Remedies and Practical Considerations in Dealing with a Wildcat Strike*, 22 Drake L. Rev. 46 (1972).

[2] Handsaker, and Handsaker, *Remedies and Penalties for Wildcat Strikes: How Arbitrators and Federal Courts have Ruled*, 22 Cath. U.L. Rev. 279 (1973).

[3] 29 U.S.C. §§ 141-187 (1970).

Act [4] provides federal courts with the jurisdiction to entertain suits by either labor or management for breach of bargaining agreements.

By the late 1950's federal courts had begun to interpret this provision regarding wildcat strikes. The United States Supreme Court ruled that section 301 permitted specific performance to be required of a negotiating party (in this case an employer) to enforce a grievance arbitration clause. The Court in *Textile Workers Union* v. *Lincoln Mills* [5] reasoned that the arbitration provision of the collective bargaining agreement had been obtained by the union in consideration for an express no-strike pledge.

Several years later, the Court found that a no-strike clause would be implied if a collective bargaining agreement featured a compulsory arbitration provision. The Court in *Teamsters Local 174* v. *Lucas Flour Co.* [6] considered the strike action of the union as a breach of contract and allowed the employer to recover damages. Such a decision would comply "with the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare." [7]

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[4] 29 U.S.C. § 185(a). The Act states in part:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

[5] 353 U.S. 448 (1957).

[6] 369 U.S. 95 (1962).

[7] Id. at 105. Opinion was rendered by Justice Stewart.

Injunctive relief is also available to employers seeking to terminate wildcat work stoppages. It has been held that collective bargaining contracts with both mandatory arbitration and explicit no-strike clauses permit the use of section 301 injunctions.[8] This remedy was extended to agreements mentioning only mandatory arbitration in *Gateway Coal Co.* v. *United Mine Workers.*[9] Following the precedent of *Lucas Flour,* the Court found an implied no-strike clause. Justice Powell, in his opinion for the Court, stressed that: "absent an explicit expression of such an intention to eliminate any no-strike expression of such an intention to eliminate any no-strike commitments, however, the agreement to arbitrate and the duty not to strike should be construed as having coterminous application." [10] Lower federal courts have also found unions liable for violating implicit no-strike obligation." [11]

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[8] *Boys Markets, Inc.* v. *Retail Clerks Union Local 770,* 398 U.S. 235 (1970).

[9] 414 U.S. 368 (1974).

[10] *Id.* at 382.

[11] *See Eazor Express, Inc.* v. *Int'l Bhd of Teamsters,* 520 F.2d 951, 960 (3d Cir.), *cert. denied,* 424 U.S. 935 (1976); *United States Steel Corp.* v. *United Mine Workers,* 534 F.2d 1063, 1073 (3d Cir. 1976); *United Constr. Workers* v. *Haislip Baking Co.,* 223 F.2d 872, 876-77 (4th Cir.), *cert. denied,* 350 U.S. 847 (1955); *Armco Steel Corp.* v. *United Mine Workers,* 505 F.2d 1129, 1132 (4th Cir.) *cert. denied:* 423 U.S. 877 (1975); *Lewis* v. *Benedict Coal Corp.,* 259 F.2d 346, 351 (6th Cir.) (Stewart, J.), *aff'd by an equally divided Court sub nom. United Mine Workers* v. *Benedict Coal Co.,* 361 U.S. 459 (1958); *Blue Diamond Coal Co.* v. *United Mine Workers,* 436 F.2d 551, 554-56 (6th Cir. 1970); *Old Ben Coal Corp.* v. *Local 1487, United Mine Workers,* 457 F.2d 162, 164 (7th Cir. 1972). *See also* Circuit Judge (now Chief Justice) Burger's dissenting opinion in *Int'l Union, United Mine Workers* v. *N.L.R.B.,* 257 F.2d 211, 218-19 (D.C. Cir. 1958).

Amicus notes that as long as an arbitration provision is included in a collective bargaining agreement, the absence of an explicit no-strike provision will not allow unions to escape liability for damages due to wildcat strikes.[12] Carbon Fuel Company has an arbitration clause in its agreement with the United Mine Workers. Although the contract no longer contains an explicit no-strike clause,[13] the above mentioned cases demonstrate that an implied no-strike agreement is enough to hold the United Mine Workers liable for wildcat strike damages.

B. The Reasonable Means Theory of District and International Labor Union liability for unauthorized strikes as articulated by the Third Circuit of the United States Court of Appeals should be applied in this case.

Section 301 of the Taft-Hartley Act describes the agency liability of unions for the activities of their officers or members.[14] The scope of liability has been subsequently held by federal courts for 301 suits to be that of the "common law rules of agency. Express authorization of ratification is not required; authority

[12] This is not the case for sympathy strikes not involving disputes between labor and management. See *Buffalo Forge* v. *United Steelworkers*, 428 U.S. 397, 407-08 (1976); *Carbon Fuel Co.* v. *United Mine Workers*, 582 F.2d 1346, 1348-49 (4th Cir. 1978).

[13] *Carbon Fuel Co.* v. *United Mine Workers*, 582 F.2d at 1350.

[14] 301(b) of the Act, 29 U.S.C. 185(b) states in part:
(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter . . . shall be bound by the acts of its agents . . . (e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

may be implied or apparent." [15] An agent may act within his scope of authority "even when he commits an act specifically forbidden by his principal." [16]

One aspect of agency theory—the mass action principle—was employed in *Carbon Fuel* to find the local unions liable for damages caused by the wildcat strikes, which occurred despite the presence of arbitration provisions in the bargaining contract.[17] The definition of mass action was authoritatively expressed by the Court of Appeals in *Eazor Express*:

> When all the members of a union employed by a given employer engage in a concerted strike not formally authorized by the union, as happened here, many courts hold the union responsible on the theory that mass action by union members must realistically be regarded as union action. The premise is that large groups of men do not act collectively without leadership and that a functioning union must be held responsible for the mass action of its members.

[15] *Mullett* v. *N.L.R.B.*, 571 F.2d 1292, 1294 (4th Cir. 1978). *See also United Mine Workers* v. *Gibbs*, 383 U.S. 715, 736 (1966); *Wagner Elec. Corp.* v. *Local 1104, Electrical Workers*, 496 F.2d 954, 956 (8th Cir. 1974); *N.L.R.B.* v. *Int'l Longshoremen & Warehousemen's Union*, 283 F.2d 558, 563 (9th Cir. 1960); *United Mine Workers* v. *Patton*, 211 F.2d 742, 747-48 (4th Cir. 1954).

[16] *N.L.R.B.* v. *Int'l Longshoremen & Warehousemen's Union*, 283 F.2d at 565.

[17] *Carbon Fuel Co.* v. *United Mine Workers*, 582 F.2d at 1349.

520 F.2d at 963.[18] If the union uses "reasonable measures" to try to encourage union members to return to work, then any striking workers are considered to be beyond the agency nexus.[19]

A restriction to the application of mass action to the union hierarchy was noted in *United States Steel Corp.* v. *United Mine Workers*. There the court stated:

> Consistent with theory, however, the liability must be limited to the entity whose membership acts in concert. In most cases, as here, that entity will be the local union. Thus absent a showing of complicity on the part of a larger union entity—the District or International Union, for example—only the local can be held liable under the mass action theory.

534 F.2d at 1074.

Complicity by a district or international union would presumably be actions which would have "instigated, supported, ratified, or encouraged any of the work stoppages. . . ." The district court in *Carbon Fuel* however

[18] *See United States Steel Corp.* v. *United Mine Workers*, 534 F.2d 1063, 1073-74 (3d Cir. 1976); *Wagner Elec. Corp.* v. *Local 1104, Electrical Workers*, 496 F.2d at 956; *Adley Express Co.* v. *Highway Truck Drivers & Helpers, Local 107*, 439 F. Supp. 436, 443-44 (E.D. Pa.), *reaff'd*, 365 F. Supp. 769 (E.D. Pa. 1973); *Vulcan Materials Co.* v. *United Steelworkers*, 430 F.2d 446, 455-56 (5th Cir. 1970); *United Textile Workers* v. *Newberry Mills, Inc.* 238 F. Supp. 366, 373 (W.D. S.C.), *aff'd*, 315 F.2d 217, cert. denied, 375 U.S. 818 (1963); *United States* v. *Bhd. of R.R. Trainmen*, 96 F. Supp. 428, 431-32 (N.D. Ill. 1951); *United States* v. *Int'l Union, United Mine Workers*, 77 F. Supp. 563, 566-67 (D. D.C.), *aff'd on other grounds*, 177 F.2d 29 (D.C. Cir.), *cert. denied*, 338 U.S. 871 (1949).

[19] 26 Vand. L. Rev. 1331, 1336 (1973).

did not find evidence revealing such complicity.[20] Therefore, mass action would not appear to be able to reach the District and International United Mine Workers Unions in this case.

Nevertheless, a theory of liability does exist to hold the District and International liable for union wildcat stoppages. The Third Circuit has developed a theory centering around the need for unions to take reasonable steps to prevent or end unauthorized strikes to avoid liability for damages. This liability effects all union levels alike.

This doctrine has been most definitively articulated in *Eazor Express*. In that case, two locals of the International Brotherhood of Teamsters were faced with wildcat strikes. The two employers effected by the strikes brought a section 301(a) suit claiming damages from both the local and the international unions. The collective bargaining agreements with the unions contained explicit no-strike clauses. The district court found all unions liable, as did the Third Circuit. Judge Maris, in his opinion for the court, declared:

> The district court held that necessarily implied in the unions' agreement that there should be no strike was an obligation on their part to use every reasonable means to bring to an end a strike begun by their members without their authorization. With this conclusion we agree. As the district court pointed out, collective bargaining agreements such as these impose a continuing day-to-day obligation on the parties to fulfill their term in good faith. . . This is certainly true with respect to the obligation that there should be no strike pending the use of grievance procedure. Accord-

[20] *Carbon Fuel Co.* v. *United Mine Workers*, 582 F.2d at 1351.

> ingly, in the case of an unauthorized strike against their employer by all the members of a union who are employed by that employer, their union may not disclaim responsibility for the losses suffered by the employer as the result of the strike unless and until it has exhausted all reasonable means within its power to bring that unlawful action to an end.

520 F.2d at 959-60. Judge Maris supplied a cogent rationale for this holding:

> A no-strike agreement would be illusory indeed were a union to be permitted to avoid all responsibility under it for the duration of a prolonged strike which was being carried on by the concerted action of all its members employed in the struck operation, merely because the strike was not initially authorized or called by the union as an organization or by those of its officers who were specially empowered to do so. Rather than to construe a contract as producing such a result, the courts will favor a construction making the mutual promises binding and giving the contract legal effect.

Id. at 960.

The court emphasized that enforcement of the no-strike clauses was necessary, not only under contract law, but also to implement the fundamental national policy of replacing costly work stoppages with the benefits of arbitration.[21]

The fact that these no-strike provisions were "basic to the agreements" was emphasized by the *Eazor Express* court. To the court, it was "perfectly clear that the parties, both the unions and their members as well

[21] *Eazor Express, Inc.* v. *Int'l Bhd. of Teamsters*, 520 F.2d at 960.

> as the employers, intended that during the term of the agreements there should be no strikes or work stoppage pending exhaustion of the grievance procedure.[22]

A no-strike provision, *per se,* can not act as a guarantee that no wildcat actions will ever occur. Yet, the presence of this clause in a collective bargaining agreement necessitates an:

> obligation of the unions, which was necessarily implied in their promise, not only not to call a strike themselves but also to take timely steps to end such an unauthorized strike by employing any and all such reasonable means at their command as might be needed to get their members back to work. It was the breach of this obligation by the unions, not any responsibility for the particular unauthorized actions of their members, which generated liability on their part.

Id. at 962.

The Third Circuit examined the question of liability of local, district and international unions for wildcat strikes in the absence of an express no-strike clause in *United States Steel Corp.* v. *United Mine Workers.* The presence of a binding arbitration clause in the collective bargaining agreement was of much significance to the court. In his opinion, Judge Gibbons stated:

> The unions are parties to a contract not to strike over an arbitrable dispute, and they have a contractual obligation to use all reasonable efforts to perform that contract. Concern with the integrity and efficacy of the agreed-upon arbitration process is no less compelling when the covenant not to strike is implied rather than express.
>
> * * * *

[22] *Id.* at 961.

> From *Lucas Flour* we know that a no-strike undertaking will be implied from a grievance and arbitration clause. A covenant to maintain the integrity of the contract necessarily embraces a reasonable efforts obligation to comply with the no-strike promise.

534 F.2d at 1073.

A recent Third Circuit case involved the liability of local, district and international unions for damages due to a sympathy strike triggered by stranger picketing.[23] The court, in holding the international liable, remarked:

> This responsibility to use reasonable means to terminate the wildcat strike is heightened by the industry-wide nature of the contract between the International and Republic. Having signed on behalf of all its members, the International was perforce acutely aware of the effects of the challenged sympathy strike on its various local and district memberships . . . Indeed, the essence of our analysis of the *quid pro quo* nature of the labor contract would indicate that where there is an industry-wide contract, there is an *industry-wide commitment* to the peaceful settlement of grievances.

570 F.2d at 479.

Once a wildcat strike has started, courts in three circuits have mandated the unions to use reasonable

[23] *Republic Steel Corp.* v. *United Mine Workers*, 570 F.2d 467 (3d Cir. 1978).

means or their best efforts (a more rigorous standard)[24] to mitigate the effects of the work stoppage, if not end it completely. More forceful action than the issuing of an "exculpatory press release"[25] is required to absolve a union from liability.

The court in *Eazor Express* gave some examples of reasonable means available to unions to discipline wildcatting strikers: suspending or expelling strikers from their unions, disciplining the union officials involved with the strike, or placing the locals under trusteeship by the international. In any event, merely instructing union members to return to work (i.e. without mentioning disciplinary sanctions) is insufficient to escape liability.[26] A union's sanctions may escalate in severity gradually until all of its means are spent.[27] At that

[24] *See Bituminous Coal Operators Ass'n* v. *Int'l Union, United Mine Workers*, 431 F. Supp. 774 (W.D. Pa. 1977), 585 F.2d 586 (3d Cir. 1978); *Penn Packing Co.* v. *Amalgamated Meat Cutters, Local 195*, 497 F.2d 888, 891 (3d Cir. 1974); *Wagner Elec. Corp.* v. *Local 1104, Electrical Workers*, 496 F.2d at 956; *Adley Express Co.* v. *Highway Truck Drivers & Helpers, Local 107*, 349 F. Supp. at 444; *Vulcan Materials Co.* v. *United Steelworkers*, 430 F.2d at 457. *See also United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1249, 1256 (5th Cir.) *rehearing denied en banc*, 526 F.2d 377 (5th Cir. 1976) where the court stated that "it is clear that a union must effectively renounce its agents' actions if they participate in an unauthorized strike."

[25] *Wagner Elec. Corp.* v. *Local 1104, Electrical Workers*, 496 F.2d at 956.

[26] *Eazor Express, Inc.* v. *Int'l Bhd. of Teamsters*, 520 F.2d at 964. *See also* Fishman, and Brown, *Union Responsibility for Wildcat Strikes*, 21 Wayne L. Rev. 1017, 1034 (1975); Whitman, *Wildcat Strikes: The Unions' Narrowing Path to Rectitude?*, 50 Ind. L.J. 472, 478 (1975).

[27] Whitman, *supra* note 26, 26 478.

point, the union would pass beyond the scope of liability.

Amicus submits that the facts in *Carbon Fuel* place it under the coverage of the Third Circuit's reasonable means theory. The collective bargaining agreement between Carbon Fuel has made with the United Mine Workers contained an arbitration clause.[28] Although the unions concerned had not made an express no-strike pledge in the contract, such an action should be reasonably implied in order to explain the presence of the arbitration provision. Since wildcat strikes over subject matter relevant to the arbitral clause occurred, the United Mine Workers, even if it did not instigate, support or ratify these actions, was bound to use reasonable means to place the strikes under control. The local union (liable in any event under the mass action theory) district and international unions are jointly and severally liable to Carbon Fuel Company for strike damages.

II. Finding District and International Labor Unions Liable For Damages Caused By Unauthorized Strikes When Reasonable Efforts Are Not Made To Prevent Or End Them Is In The Public Interest.

Amicus recognizes that the reasonable means standard was rejected by the court in *Carbon Fuel.*[29] The Fourth, Sixth and Seventh Circuits generally follow the restrictive standards for union liability enunciated in the *Haislip* case. These circuits require the finding of active union involvement such as instigating, supporting or ratifying unauthorized strikes before liability will ensue. Amicus strongly submits, however, that the liability standard of the Third Circuit is the better law since its application would be more beneficial to the public interest.

[28] The contract was formally entitled, "National Bituminous Coal Wage Agreement of 1971."

[29] *Carbon Fuel Co.* v. *United Mine Workers,* 582 F.2d at 1350-51.

The occurence of unauthorized strikes is an evil which can have a significant impact upon an employer and, ultimately, the public he serves. Such strikes can:

> without warning cause serious and recurring losses of production and marketing and create a reputation for unreliability. The wildcat strike is additionally important to the employer because the threat of the wildcat strike poses a constant and serious threat to the efficient operation of the company, the ability of management to run its own operation and the development of an atmosphere of harmonious labor relations.

Shearer, *supra* note 1, at 46.

Federal courts have also warned of the calamities produced by unauthorized strikes. In a landmark case, the Fourth Circuit declared:

> It is perfectly clear not only that the 'wildcat' strike is a particularly harmful and demoralizing form of industrial strife and unrest, the necessary effect of which is to burden and obstruct commerce, but also that it is necessarily destructive of that collective bargaining which it is the purpose of the act the National Labor Relations Act to promote.

N.L.R.B. v. *Draper Corp.,* 145 F.2d 199, 203 (4th Cir. 1944).

The wildcat strike, which may occur at a moment's notice and with devastating impact upon an unsuspect-

ing employer, must be dealt within the most effective manner to deter such conduct in the future.

The collection of damages is certainly a fundamental aspect of deterrence. It is far superior to other remedies such as the discharge of strikers, injunctions or suits against individual employees. These actions may only intensify the wildcat strikes, not compensate the employer fully for his losses or be precluded by law.[30]

To fully implement the provision in section 301(a) permitting suits for damages, all union levels, if they fail to use reasonable efforts to restrict wildcat stoppages, should be held liable by the courts. One commentator has observed that:

> the benefit of including the international in the damage action lies in enhancing the possibility of collection on a judgment. The inclusion of the international in such an action may also serve as a catalyst to encourage the international to clean its own house and take stronger control of the local. . . . While unions are reticent to take such drastic measures such as the imposition of a trusteeship over a local union, the threat of damage action may encourage such measures.

Shearer, *supra* note 1, at 64. In this way, "constant industrial warfare" can be avoided.[31]

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[30] 89 Harv. L. Rev. 601, 604 (1976). The Taft-Hartley Act, in section 301(b) states in part:

> Any money judgment against a labor organization . . . shall be enforceable only against the organization . . . and shall not be enforceable against any individual member or his assets.

[31] Shearer, *supra* note 1, at 64. See 31 Vand. L. Rev. 706, 715 (1978).

Federal courts have also demanded that internationals assume responsibilities to enforce labor peace. The Third Circuit has emphasized:

> Our holding that the International may be liable is mandated by the public interest. The International union simply must bear certain obligations if it is to continue to be entitled to the rights and benefits accorded by our national labor policy. To the extent that any union—local, district, or international; craft, industrial, or independent—refuses to enforce appropriately authorized union discipline upon recalcitrant members who violate either collective bargaining agreements or internal by-laws of the union, that union can be said to have abrogated a proportion of valued rights granted to the union under our national labor policy.

Republic Steel Corp. v. *United Mine Workers,* 570 F.2d at 479-80.

Amicus finds that the public interest could only be served by applying the reasonable means standard to district and international unions. District, and especially international unions have far greater financial resources than locals. Their "deep pockets" should be made available to compensate employers for the miseries of wildcat strikes.

Amicus notes that in the case of the United Mine Workers' unions involved in *Carbon Fuel,* the U.M.W. international has had a direct impact upon the affairs of its district and local branches. The powerful international has not in the past hesitated to intervene in lower union affairs, such as assuming trusteeship over

district unions [32] or conscripting local officials as agents for international elections.[33] Holding the district and international liable is but a logical fulfilment of the national labor policy against unauthorized work stoppages.

CONCLUSION

When a collective bargaining agreement contains an arbitration clause, wildcat strikes concerning arbitral issues will be considered a breach of the contract, even if, as in *Carbon Fuel,* there were no explicit no-strike contractual provisions. An implied no-strike agreement will be read in by a court.

Under the reasonable means theory of the Court of Appeals of the Third Circuit, the local, district and international unions must use all reasonable means within their power to eliminate the unauthorized strikes. Failure to do so will result in liability for compensatory damages to the relevant employer. This theory is the better standard of liability because it reaches the district and international unions. These unions should be made responsible for various reasons, including the need for implementing the national labor policy of supporting arbitration, allowing the employer to be fully reimbursed for wildcat damages and because of the commitment by all union levels to the industry wide contract and its implicit no-strike provision.

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[32] *Hodgson* v. *United Mine Workers,* 344 F. Supp. 990, 993-97 (D. D.C. 1972).

[33] *Hodgson* v. *United Mine Workers,* 344 F. Supp. 17, 26 (D. D.C. 1972).

The dangers to employers of unauthorized strikes are immediate, direct and of a most profound nature. By reversing the holding of the Court of Appeals of the Fourth Circuit and substituting the reasonable means standard of union liability, this Court will be upholding the sanctity of collective bargaining agreements against unilateral wildcat actions.

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